

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MONROE MERRITT,)	
)	2:07cv1681
Plaintiff,)	Electronic Mail
)	
v.)	Judge Cercone
)	Magistrate Judge Bissoon
ALAN B. FOGEL., <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Monroe Merritt (“Plaintiff”) is a state prisoner who is incarcerated at the State Correctional Institution at Graterford, Pennsylvania (“SCI-Graterford”). Plaintiff brings the instant lawsuit pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, *et seq.*, alleging violations of the Eighth Amendment to the Constitution of the United States with respect to Defendants’ treatment, or lack thereof, of his Hepatitis C. This suit commenced with the receipt of the initial complaint on December 10, 2007. (Doc. 1). On August 1, 2008, Plaintiff’s claims were dismissed, and his motions to amend the initial complaint were denied. (Docs. 67, 70). The Court of Appeals for the Third Circuit reversed those decisions on October 22, 2009. See Merritt v. Fogel, 349 F. App’x 742, 746-47 (3d Cir. 2009). Plaintiff’s amended complaint was filed with this Court on December 22, 2009. (Doc. 82). Plaintiff’s state law claims for medical negligence against all Defendants, as well as all of his claims against Defendant Department of Corrections Bureau of Health Services, were dismissed in September 1, 2010. See (Docs. 100, 103).

This case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On September 7, 2011, the magistrate judge issued a report and recommendation (Doc. 123), in which she recommended that the motion for summary judgment filed by Defendants Beerman, Burks, Fairman, Fogel, Folino, Ginchereau, McAnany, Reisinger, Rossi, Scharff, and Watson, (Doc. 112), be granted. The magistrate judge further recommended that the motion for summary judgment filed by Defendants America Service Group, Inc., Falor, Harper, Howard-Diggs, Jin, Prison Health Services, Inc., Talabi, and Thorpe, (Doc. 113), be granted. The magistrate judge also recommended dismissing Defendant Reese, *sua sponte*.

Plaintiff filed objections on September 22, 2011, arguing that the magistrate judge should have considered new forms of treatment that had not been approved by the FDA until after the instant motions for summary judgment had been filed. (Doc. 124) at 4. Plaintiff also directs this Court's attention to a ruling in the Middle District of Florida, finding that a plaintiff had sufficiently established a custom or policy on the part of Prison Health Services discouraging medical personnel, other than a physician, from transferring inmates to a hospital for emergency treatment, to survive summary judgment.¹ See Fields v. Prison Health Services, Inc., No. 2:09-cv-529-FtM-29DNF, 2011 WL 864905, at *5 (M.D. Fla. Feb. 14, 2011). Based on the record before this Court, neither of these arguments supports the conclusion that Defendants were deliberately indifferent with respect to their treatment of Plaintiff's Hepatitis C.

¹ It appears that a jury found in favor of the plaintiff in that case at trial. See Fields v. Prison Health Services, Inc., No. 2:09-cv-529-FtM-29DNF, 2011 WL 3878373 (M.D. Fla. Sept. 2, 2011).

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 28^E day of September, 2011,

IT IS HEREBY ORDERED that the motion for summary judgment filed by Defendants Beerman, Burks, Fairman, Fogel, Folino, Ginchereau, McAnany, Reisinger, Rossi, Scharff, and Watson (Doc. 112) is GRANTED.

IT IS FURTHER ORDERED that the motion for summary judgment filed by Defendants America Service Group, Inc., Falor, Harper, Howard-Diggs, Jin, Prison Health Services, Inc., Talabi, and Thorpe (Doc. 113), is GRANTED.

IT IS FURTHER ORDERED that all claims against Defendant Reese are DISMISSED.

IT IS FURTHER ORDERED that, to the extent that these objections can be read as a motion for appointment of counsel, such a motion is DENIED as MOOT.

IT IS FURTHER ORDERED the magistrate judge's report and recommendation (Doc. 123) is adopted as the opinion of this Court.

DS Cernone

David Stewart Cernone
United States District Judge

cc: Monroe Merritt
AY-4389
SCI Graterford
PO Box 244
Graterford, PA 19426
(*Via First Class Mail*)

Douglas B. Barbour, Esquire
Kathryn M. Kenyon, Esquire
P. Brennan Hart, Esquire
(*Via CM/ECF Electronic Mail*)